



## MONTGOMERY COUNTY ETHICS COMMISSION

Steven Rosen  
*Chair*

Kenita V. Barrow  
*Vice Chair*

**January 25, 2018**

### **Advisory Opinion 18-01-004**

The Ethics Commission considered requests for waivers submitted by a Montgomery County Fire and Rescue Service (MCFRS) Captain and a Master Firefighter. The waivers were required because the Ethics Commission regulation at COMCOR 19A.06.02.04.3 provides that a County employee is “prohibited from working for any person(s) or entity in which an economic interest is held by a person(s) the county employee supervises or who supervises the County employee as part of their county employment.” Here, the Captain submitted an outside employment request for his own outside business enterprise, and the Master Firefighter submitted an outside employment request to work for the Captain in the outside business.

In submitting his outside employment request, the Captain answered the following question in the affirmative:

Does a person who you supervise or who supervises you with respect to your County position have an ownership, employment or other economic interest in the outside employer?

The Master Firefighter submitted his request for outside employment and also answered that question with “yes.”

The Captain, in his capacity as supervisor of the Master Firefighter, reviewed the Master Firefighter’s outside employment request in the Ethics Commission’s online system and stated:

I am not only the supervisor of this employee in Montgomery County, but I am also the owner of the outside employment firm he is requesting approval for. [The Master Firefighter] works as a sub-contractor for us a few times per year. He does not have any specific hours per week. I approve of the request. I see no reason why it should be denied simply because we work together "on the job" and off. Many people who work in the county work for outside employers who also work in the county and this is no different. Who would you hire? Someone you know who has a solid work ethic, is extremely talented in the subject at hand, and has tons of experience in the field is to me the best person for the job. Thank you.

---

### **MONTGOMERY COUNTY ETHICS COMMISSION**

**100 MARYLAND AVENUE, ROOM 204, ROCKVILLE, MARYLAND 20850**  
**OFFICE: 240.777.6670 FAX: 240.777.6672**

The Fire Chief of the MCFRS recommended the requests for outside employment for approval by the Ethics Commission, notwithstanding the presence of an ethics restriction. Subsequently, the Fire Chief supported the requests of the Captain and the Master Firefighter for a waiver of the ethics restriction.

The restriction on employees who are in a supervisor/supervisee relationship working together in a business enterprise outside County service concerns the potential for and appearance of inappropriate conduct. This conduct could, in theory include: favoritism or an appearance of favoritism in the County workplace or elsewhere; advantage due to relative stations in County office, where a supervisor gains the benefit of the subordinate's services in the outside business as a result of the inherent leverage of the supervisor's official position in the County service; the possibility of a County employee who is subordinate to another, seeking to gain favor of a superior by engaging in outside services for the superior; and the inappropriate circumstance where a County subordinate, as a superior to his County supervisor in an outside business, is able to use the status and leverage of that relationship for gain or the appearance of gain in County employment. These are the types of concerns that are intended to be addressed by the restriction: the opportunity for and appearance of favoritism or misconduct involving County employees in a supervisor-supervisee relationship when they engage in outside business together.

Neither the request for a waiver from the Captain or the Master Firefighter provide any facts that provide assurance regarding the fundamental rationale for the regulatory provision. The requests for waiver of the ethics restriction submitted by the Captain and the Master Firefighter both indicated that there was no "actual conflict of interest." The Captain's waiver appears to proceed on the theory that there is no conflict as a result of the limited amount of control the Captain exercises over the activities of the Master Firefighter. The waiver request of the Captain stated that he has "no direct control or influence over [the Master Firefighter's] salary, overtime, benefits, leave, assignment, evaluations, or ability to transfer. I have a subordinate officer that manages routine administrative affairs for my shift. As such, I would not compromise my official duties by virtue of an outside business relationship." The Captain's request states that he has "no direct control" but he does "manage the day to day operations of the fire station and the personnel there." The Master Firefighter's request for a waiver refers to the Captain as being the "direct supervisor" of the Master Firefighter.

The Commission does not think the facts presented in the request for a waiver establish that there is such a separation between the roles and responsibilities of the Captain and the Master Firefighter that the rationale for the regulatory provision is negated or that the facts support that no "actual conflict" exists.

This circumstance is unlike a previous circumstance involving a MCFRS Captain who wanted to employ a firefighter who was assigned to his station. In that case, the firefighter he wanted to employ was a junior firefighter who was part of a larger float pool of personnel that are placed in vacancies that arise for sick leave, annual leave, casual leave, and other details County wide. The junior firefighter involved was almost always detailed to a station with a vacancy. The current waiver requests involve a master

firefighter, not a junior firefighter; and the Master Firefighter refers to the Captain as his “direct supervisor.” The Commission notes that in the prior instance, the Captain did not sign off on the outside employment request of the junior firefighter; here the Captain did sign off on the Master Firefighter’s outside employment request. The action of signing off on the Master Firefighter’s request itself reflected a lack of sensitivity to ethics requirements. When the Captain acted on the request as a supervisor, he was taking government action that advanced the interests of and specifically related to his outside business, an action which runs counter to ethics principles and law.

Accordingly, the requests for a waiver are denied by the Ethics Commission.

For the Commission:



---

Steven Rosen, Chair